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VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

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Attention: Video Division, Media Bureau
Re: Emergency Request for Temporary Suspension of DTV Simulcasting
Requirements for NCE TV Stations Pending Resolution of Second
Periodic Review

Dear Ms. Dortch

The undersigned representatives of and counsel to noncommercial educational ("NCE") television licensees hereby request that the FCC immediately suspend the DTV simulcasting requirements for NCE television stations pending resolution of the questions raised concerning simulcasting in the *Notice of Proposed Rule Making* in MB Docket No. 02-15 and MM Docket Nos. 99-360, 00-167 and 00-168 (released January 27, 2003) (the "Second Periodic Review NPRM").

NCE DTV stations are subject to a May 1, 2003 construction deadline. While a number of NCE stations have requested extension of the deadline, a substantial majority of NCE DT stations will be on the air by that date or shortly thereafter. NCE DTV stations are also subject to the simulcasting requirements of Section 73.624 (b) of the Rules, which mandate that DTV stations simulcast at least 50% of the programming of the associated NTSC station as of April 1, 2003.¹

Many NCE DT stations that have been or will soon be constructed have informed the undersigned that, although they are able to transmit a digital television signal and therefore are able to certify completion of construction, they will be unable for some time to comply with the simulcasting requirements. In some cases, although the DTV stations are able to receive and broadcast PBS or other digital programming utilizing temporary satellite dishes located at their transmitters, necessary STL or other digital interconnection facilities between their studios and the transmitters are not yet in place, making it difficult or impossible for the DTV stations to

¹ There is some ambiguity whether the Commission intends for the simulcasting requirement for NCE DT stations to begin April 1, 2003 or May 1, 2003. Section 73.624(b) states the date to be **April** 1, 2003. However, footnote 94 of the Second Periodic Review NPRM seems to suggest that, **for** NCE DT stations, the simulcast requirements become effective May 1, 2003, when NCE DT stations are supposed to be on the air.

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receive the simulcast programming feed from their studios. In other cases, encoding equipment to enable the station's NTSC programming to be digitized for DTV broadcast is not yet delivered and/or installed.

In this respect, it is important to note that commercial television stations had a minimum of 11 months between the latest time they were to complete DTV construction (May 1, 2002) and the commencement of the simulcasting requirements on April 1, 2003. This period of time permitted commercial stations to focus their efforts initially on transmission system facilities acquisition and installation to meet their construction deadline, and then turn their attention subsequently to acquiring and installing encoding and interconnection facilities. The construction and simulcasting deadlines for NCE stations, on the other hand, have essentially merged, requiring NCE DT stations to focus on both transmission systems and encoding and STL systems at once. This has been an impossible task for many NCE stations.

NCE DT stations therefore seek temporary relief from the simulcasting requirements. In order to save NCE DT licensees and the FCC from having to prepare, file, consider and act on numerous individual waiver requests, and given the similarity of NCE DT stations' situations, the undersigned urge the FCC to suspend temporarily the simulcasting requirements for NCE DT stations pending further consideration by the Commission of the matter.

We note that, in the Second Periodic Review NPRM, at ¶¶ 65-67, the Commission questions whether it should retain, revise, or remove the simulcast requirement, and whether the existing dates are appropriate. The Commission notes that simulcasting may create disincentives for innovative DTV programming strategies, and suggests that the marketplace itself may create incentives for simulcasting that make regulatory requirements unnecessary.² Representatives of public television are in the process of preparing comments on this and other issues in response to the Second Periodic Review NPRM, and expect that those comments will support changes in the Commission's current simulcasting requirements.

Given the difficulties NCE DT stations are having satisfying both their construction obligations and the simulcasting requirements at the same time, and considering that the Commission is fundamentally re-evaluating whether the simulcasting requirements should be modified or retained at all, it makes sense to suspend temporarily the requirements for NCE DT stations while these issues are under consideration.

Suspension of the simulcasting requirement will also make it possible for some NCE DT stations to certify completion of construction and begin digital broadcasts at an earlier time. Some stations that are able to broadcast a digital signal, but that do not yet have the capability of simulcasting, have chosen to file CP extension requests and remain off the air altogether until

² Second Periodic Review NPRM at ¶ 66.

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they have the necessary encoding and interconnection equipment in place. Given the uncertainty surrounding simulcasting, the current requirements should not stand in the way of having more, rather than fewer, NCE DT stations on the air.

Finally, given that the simulcasting requirement for NCE DT stations may otherwise be effective within a week, we **ask** that this request be considered on an emergency basis.

For the foregoing reasons, the undersigned urge the FCC to suspend the simulcasting requirements of Section 73.624(b) of the rules, as they apply to NCE DT stations, pending resolution of the simulcasting issues in the Second Periodic Review.

Respectfully submitted,

Todd D. Gray
Margaret L. Miller
Dow, Lohnes & Albertson, pllc
1200 New Hampshire Avenue, NW
Washington, D.C. 20036
Phone: 202-776-2517
Fax: 202-776-4571
tgray@dlalaw.com

Lawrence M. Miller
Malcolm G. Stevenson
Schwartz, Woods & Miller
1350 Connecticut Avenue, N.W. - Suite 300
Washington, D.C. 20036-1717
Phone: 202-833-1700, Ext. 213
Fax: 202-833-2351
miller@swmlaw.com

Paul Greco
VP & Deputy General Counsel
Public Broadcasting Service (PBS)
1320 Braddock Place
Alexandria, VA 22314
Phone: 703-739-5277
Fax: 703-837-3300
pereco@Dbs.org

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Marilyn Mohrman-Gillis
Vice President, Policy and Legal Affairs
Lonna Thompson
Associate Vice President, Strategic Initiatives and
Corporate Counsel
Andrew D. Cotlar
Senior Staff Attorney
Association of Public Television Stations
666 11th Street, N.W. Suite 1100
Washington, D.C. 20001
Phone: 202-654-4200
Fax: 202-654-4236
marilyn@apts.org

cc: Barbara Kreisman
Clay Pendarvis
John Morgan
Rick Chessen